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11 SYSTEM/WEST, FEATHER RIVER HOSPITAL
12 d/b/a ADVENTIST HEALTH FEATHER RIVER,
13 and PARADISE RETIREMENT RESIDENCE
14 LIMITED PARTNERSHIP d/b/a FEATHER
15 CANYON

16 **UNITED STATES BANKRUPTCY COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **SAN FRANCISCO DIVISION**

19 In re:

20 PG&E CORPORATION,

21 - and -

22 PACIFIC GAS AND ELECTRIC COMPANY

23 Debtors.

Case No. 19 - 30088 (DM)

Chapter 11
(Lead Case)
(Jointly Administered)

**THE ADVENTIST CLAIMANTS' AND
FEATHER CANYON'S RESPONSE TO
AND RESERVATION OF RIGHTS RE:
DEBTORS' MOTION PURSUANT TO 11
U.S.C. §§ 363(b) AND 105(a) AND FED. R.
BANKR. P. 6004 AND 9019 FOR ENTRY
OF AN ORDER (I) AUTHORIZING THE
DEBTORS AND TCC TO ENTER INTO
RESTRUCTURING SUPPORT
AGREEMENT WITH THE TCC,
CONSENTING FIRE CLAIMANT
PROFESSIONALS, AND SHAREHOLDER
PROPOSERS, AND (II) GRANTING
RELATED RELIEF**

Hearing Date and Time:

Date: December 17, 2019

Time: 10:00 a.m. (Pacific Time)

Place: Courtroom 17

450 Golden Gate Ave., 16th Floor
San Francisco, CA 94102

- 24
25 ☐ Affects PG&E Corporation
26 ☐ Affects Pacific Gas and Electric
27 Company
28 ☒ Affects both Debtors

** All papers shall be filed in the Lead Case,
No. 19-30088 (DM).*

1 PLEASE TAKE NOTICE that Creditors Adventist Health System/West (“Adventist
2 Health”), Feather River Hospital d/b/a Adventist Health Feather River (“AHFR”), each a
3 California religious non-profit corporation (together, the “Adventist Health Claimants”), [and
4 Paradise Retirement Residence Limited Partnership d/b/a Feather Canyon (“Feather Canyon”)]
5 hereby respectfully submit this Response to and Reservation of Rights regarding *Debtors’ Motion*
6 *Pursuant to 11 U.S.C.. §§ 363(b) and 105(a) and Fed. R. Bankr. P. 6004 and 9019 for Entry of*
7 *An Order (I) Authorizing the Debtors and TCC to Enter Into Restructuring Support Agreement*
8 *with the TCC, Consenting Fire Claimant Professionals, and Shareholder Proponents, and (ii)*
9 *Granting Related Relief* [Dkt. # 5038] (the “Motion”).

10 1. Adventist Health is a faith-based, nonprofit integrated health system headquartered
11 in Roseville, California. AHFR is part of the Adventist Health hospital system. Prior to the
12 Camp Fire, AHFR had extensive operations in Paradise, California, including its Feather River
13 Hospital, which was a 100-bed acute care, community hospital. The hospital was then the largest
14 employer in Paradise, with in excess of 1200 employees. The Camp Fire devastated the main
15 campus of the hospital, rendering it incapable of operation since the fire, and also severely
16 damaged several other AHFR facilities in Paradise. Feather Canyon was a senior, independent
17 living facility located near the hospital in Paradise, and was made up of one three-story building
18 with 116 residential units and three cottages with a total of eleven units. Before the fire, Feather
19 Canyon had at least a 95% occupancy rate. The Camp Fire burned large portions of Feather
20 Canyon’s campus, heavily damaging the main building and completely destroying the three
21 cottages and assorted outbuildings. Feather Canyon is now closed and may never reopen.

22 2. The Adventist Health Claimants have filed Proofs of Claim asserting a total claim
23 against Debtors for \$1,012,061,204, including a total of \$506,030,602 in itemized damages, an
24 equal amount of punitive damages, and some additional categories of damages in amounts to be
25 determined. Accordingly, the Adventist Health Claimants hold most likely the largest Fire
26 Victim Claims in these cases. Feather Canyon similarly filed a substantial claim against the
27 Debtors’ estates—its claims total more than \$95 million in actual compensatory damages,
28 economic business losses and punitive damages, plus additional losses.

1 3. Notwithstanding the Debtors' assertion that the Tort Claimants RSA (and the Term
2 Sheet attached thereto) is "the product of substantial . . . negotiations" that "were successful in
3 building a consensus with the Debtors' largest creditor constituency", neither the Adventist
4 Health Claimants nor Feather Canyon were involved in any aspect of the Tort Claimants RSA,
5 and had never seen the Debtors' Amended Plan until it was filed on December 12, 2019.
6 [Motion, p. 18, ll. 17-19.] While the Debtors may well have been successful in "building a
7 consensus" in *number* of wildfire victims, no attempt appears to have been made to build
8 consensus among those victims with large property damage and business loss claims. The
9 Adventist Health Claimants and Feather Canyon have had barely three days in which to review
10 the Debtors' Amended Plan before being obligated to file this response. Therefore, each reserves
11 any and all rights with respect the Debtors' Amended Plan, including without limitation the right
12 to file any and all objections relating to whether the Debtors' Amended Plan treats the Fire
13 Victim Claimants fairly as required by AB 1054, whether there is disparate treatment among
14 classes of Fire Victim Claimants, whether there is unfair discrimination and improper
15 classification as between the Fire Victim Claimants and the Public Entities Wildfire Claimants,
16 and with respect to any further actions that may be taken before Judge Donato .

17 4. The Adventist Health Claimants and Feather Canyon also file this Response to
18 alert the Court of several particularly troubling provisions of the Tort Claimants RSA and Term
19 Sheet that appear to dictate how the Debtors' Amended Plan will move forward in the future:¹

20 a. Under the Tort Claimants RSA, the Debtors must amend their plan to include all
21 terms and conditions of the RSA with the modifications in the Term Sheet. [Tort Claimants RSA,
22 p. 3.] Article III of the Term Sheet requires all Fire Victim Claims to be satisfied solely from the
23 Fire Victim Trust, which shall administer and pay all Fire Victim Claims in accordance with the
24 "Fire Victim Trust Agreement" and the "Fire Victim Claims Resolution Procedures." [Term
25 Sheet, § 6.6, p. 6-7.] Section 6.6(b) of the Term Sheet then states that "[e]ach trust comprising
26 the Fire Victim Trust is intended to be treated" as a qualified settlement fund, thereby clearly
27

28 ¹ Under Section 2(o) of the Tort Claimants RSA, each party shall not "object to, delay, impede, or take any other
action to interfere with the . . . implementation of the Amended Plan."

1 providing for multiple trusts to be created under the Debtors' Amended Plan. [Term Sheet, p. 7
2 (emphasis added).]

3 Yet, no meaningful description of the terms of the "Fire Victim Trust Agreement" or the
4 number or type of Fire Victim Trusts are provided, much less the "Fire Victim Resolution
5 Procedures" that will govern the resolution, liquidation, and payment of claims. Instead, the Tort
6 Claimants RSA gives the "Requisite Consenting Fire Claimant Professionals" sole authority to
7 provide the Debtors with "all terms of the Fire Victim Trust not specified in the Term Sheet no
8 later than January 20, 2020." [Tort Claimants RSA, § 2(i).] Thus, a simple majority of members
9 of the TCC (almost all of which are individual personal injury claimants) and a simple majority of
10 the Consenting Fire Claimant Professional Group (all of which appear to be counsel to individual
11 personal injury claimants) will be able to dictate all of the terms of the Fire Victim Trust,
12 apparently without input of any other constituencies holding property damage and business
13 losses. This is particularly troubling if such counsel are compensated on a contingency basis,
14 thereby putting their own pecuniary interests in potential conflict with the interests of the rest of
15 the creditor body.

16 The Adventist Health Claimants and Feather Canton suggest that the Court direct that the
17 TCC, acting as a fiduciary to all holders of Fire Victim Claims, be given the primary
18 responsibility to develop the terms of the Fire Victim Trust Agreement and the Fire Victim
19 Claims Procedures, subject to equal input from the Consenting Fire Claimant Professionals and
20 holders of property damage and business loss claims. Then, such procedures should be subject to
21 approval from this Court on adequate notice. Additionally, the agreements and procedures should
22 be worked out well in advance of confirmation so that parties have an adequate opportunity to
23 comment, as opposed to on an expedited basis on shortened time as has been the case with this
24 Motion.

25 b. While the Adventist Health Claimants and Feather Canyon have only had a few
26 days to examine the Debtors' Amended Plan, several other provisions of the Debtors' Amended
27 Plan appear to suffer from the same inherent bias in favor of the Consenting Fire Claimant
28 Professionals and what appears to be their individual personal injury clients, rather than treating

1 the interests of all individual and property damage and business loss fire victims equally. Section
2 6.8(e) of the Debtors Amended Plan, for example, appoints a Fire Victim Trust Oversight
3 Committee, but includes only those who are Consenting Fire Claimant Professionals (i.e., the 13
4 firms who represent individual claimants who signed onto the Tort Claimant RSA), and the TCC.
5 Large property damage and business loss claimants such as the Adventist Health Claimants and
6 Feather Canyon are given no voice, even though they constitute a significant portion of the
7 damages to be compensated from the Fire Claims Trust.

8 Similarly, Section 7.1 of the Plan – entitled Objections to Claims – signals voting metrics
9 in favor of individual personal injury claimants. Section 7.1 deems all Fire Victim Claims as
10 disputed and unliquidated, designating the Plan itself a global objection to all Fire Victim Claims
11 except for (i) claims arising out of the 2015 Butte fires that were the subject of fully executed pre-
12 petition settlement agreements with the Debtors and (ii) any other Fire Victim Claim that is
13 settled or allowed by order of the Bankruptcy Court. While the actual voting metrics are not
14 spelled out at this point (and they should be), Section 7.1 appears to signal that all Fire Victim
15 Claims will be assigned the same amount for voting, regardless of the type of damage claim or
16 the amount asserted, when considering whether Class 5A-III and Class 5B-III have voted to
17 accept the Debtors' Amended Plan. This puts all of the voting power in the hands of blocks of
18 plaintiffs' lawyers with many individual claimants, and disenfranchises large single claims for
19 property damages and business losses, including the Adventist Health Claimants and Feather
20 Canyon claims.²

21 Thus, the Debtors and the TCC should immediately be required by the Court to involve
22 (through mediation or otherwise) not only the plaintiffs' lawyer groups but other constituencies of
23 property damage, business and economic loss fire victims in formulating more appropriate
24 objection to claims and voting methodologies that take into account the differing types and
25 amounts of claims. In addition to trying to reach a broad consensus on voting methodologies, the
26 Debtors, the TCC and these other constituencies should ensure as a backstop that there is a
27

28 ² The Adventist Health Claimants and Feather Canyon appreciate the logistics and costs of filing objections in a case
with so many claims, but accommodation must be made to allow fair voting.

1 streamlined process for fire victims and the TCC to attempt to stipulate to the temporary
2 allowance of their claims for voting purposes. Otherwise, this Court will be overwhelmed at
3 some point with multiple motions to estimate claims for voting purposes under Bankruptcy Rule
4 3018, as claimants come forward and seek estimation just to avoid disenfranchisement and
5 preserve the basic voting protections guaranteed by Section 1126. These matters all should be
6 addressed sooner rather than later in order to ensure efficiency and avoid as many disputes as
7 possible surrounding voting.

8 c. The Adventist Health Claimants note that the TCC Claimants RSA may be
9 terminated if Section 4.19(f)(ii) of the Amended Plan has not been modified to the satisfaction of
10 the TCC and the Requisite Consenting Fire Claimants, and that a new form of release has been
11 attached as an exhibit to the Debtors' Amended Plan. Without waiving any objection of the
12 Adventist Claimants' to the latest form of release, the Adventist Health Claimants have come to
13 closure with the Ad Hoc Subrogation Committee on the form of a stipulation evidencing the
14 resolution of its objections to Section 4.19(f)(ii), and are waiting to hear of the Debtors' consent
15 to that resolution.

16 5. In conclusion, while the Adventist Health Claimants and Feather Canyon do not
17 oppose in concept the \$13.5 billion settlement that will fund wildfire victims, the Adventist
18 Health Claimants and Feather Canyon respectfully request that the Court take into account the
19 matters raised above in connection with consideration of the Tort Claimants RSA in order to
20 ensure that, if approved, the Tort Claimants RSA does not lead to an unbalanced restructuring that
21 favors one group of wildfire victims over others.

22 Dated: December 16, 2019

Respectfully submitted:

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